

REMARKS

The following remarks and the above amendments are submitted to address all issues in this case, and to put this case in condition for allowance. The claims are amended solely to better define the subject matter of the instant invention and do not add any new matter. Application claims 1 through 20 are pending in the application. After amendment, application claims 1, 19 and 20 are independent.

Applicants have studied the Office Action Mailed October 5, 2005 and have the following remarks.

35 U.S.C. §102

The Examiner has rejected claims 1-4 and 7-20 as being anticipated by either Wachter (US 3,775,949) or Grandjean et al (US 5,900,043 - hereinafter Grandjean) Applicants respectfully traverse the rejections and contend that the claims are not anticipated by the cited references.

The Examiner asserted that both Wachter and Grandjean each show a system having one air path including a filter (filtered), and one which does not include a filter (unfiltered). Applicants respectfully contend that this actually misstates the showing of both references, but more importantly, that the claims are still not anticipated because neither of the references show the inclusion of an NBC filter in one path and not in a second path.

In the first instance, the Examiner's assertion is not an accurate depiction of Wachter or Grandjean. In particular, Wachter teaches a filtration unit whereby the primary and default air flow path 8 is through a coarse dust filter 5, and then through a suspended matter filter or gas filter 6. The secondary air flow path consists of a by-pass line 16 whereby the air flows around the coarse dust filter 5, but still must go through the suspended matter filter and gas filter 6.

Wachter provides for no air paths which are free of filtration as all air passes through the suspended matter and gas filter 6.

Grandjean shows a similar construction, the principle path goes through electrostatic filter 1 and then through high efficiency filter 24. The other path 22, bypasses the electrostatic filter 1 but still passes through the high efficiency filter 24. Therefore, neither device actually shows an “unfiltered” path.

However, the claims of the instant case do not simply recite that there are two paths one being filtered and one being unfiltered. The claims instead specify that there are two paths, one path where air passes through an NBC filter, while the other path does not. Even if one was to say that one path of Wachter or Grandjean is filtered and one is unfiltered based on the bypass of the dust filter or electrostatic filter (even though both paths actually are “filtered”), neither shows a path where air passes through an NBC filter.

The Examiner states on Page 5 of the Office Action that “The phrase ‘a nuclear, biological, and chemical (NBC) filtration unit for use with a portable environmental control unit (ECU)’ has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure no depending for completeness upon the introductory clause.” [emphasis added].

Applicants note the preamble of claim 1 does include the above phrase, however that phrase does not appear in independent claims 19 or 20 which do not specify any type of NBC filtration unit in the preamble.

However, in all the independent claims, after the preamble, there is specified an air path where air passes through an NBC filter. “a second air flow path wherein air passes. . . through

an NBC filter” (Claim 1); “flowing air through a first of said at least two air paths and through a nuclear, biological, and chemical (NBC) filter” (claim 19); and “means to force air through a nuclear biological and chemical (NBC) filter in a first air flow path” (claim 20 - as amended).

Applicants therefore contend that even if the preamble reciting an “NBC filtration unit” is not entitled to patentable weight, the elements of two air flow paths where air passes through an NBC filter in one path, but not in the other is entitled to patentable weight.

Still further, Applicants point out that claim 15, which is dependent on claim 1, specifically states that the first air path (which does not include the NBC filter) may include a filter which is not an NBC filter. One example of which is given on page 11 of the instant specification being a dust filter. This adds further reinforcement that the inclusion of a non-NBC filter in Wachter of Grandjean provides no teaching with regards to drawing air through an NBC filter in one path but not another.

Further, with regards to other dependent claims, The references make no mention of the location of a blower, or that the NBC filter is a deep carbon bed filter among other elements. Therefore, these dependent claims further recite elements not shown in the references and therefore are clearly not anticipated, even in the event that the independent claims were found anticipated.

Wachter and Grandjean also do not provide for a filtration system whereby filtered air is provided to an ECU which is also an element of claims 1 and 19 as air is provided to the ECU after passing through the NBC filter. Applicants contend this is also an element of the claim and entitled to patentable weight.

35 U.S.C. §103

The Examiner has rejected claims 5 and 6 as obvious in light either Wachter or Grandjean, in view of Rick et al (5,925,172 - hereinafter Rick) or Haartsen (2005/0059347). Applicants respectfully traverse the rejection of the claims on the grounds that the current claims are not obvious in light of any combination of the above.

Applicants first note that Haartsen was filed after the instant application. While Haartsen claims priority to a provisional application filed prior to the instant application, the Examiner has not shown that the referenced elements were shown in the provisional application. It is therefore not shown that Haartsen is prior art under §102(e). However, without admission as to whether Haartsen is prior art and reserving the right to later argue that it is not, Applicants have chosen to distinguish it.

As discussed above, Wachter and Grandjean fail to show filtration units or methods having two separate air paths, one of which passes through an NBC filter and the other of which does not. None of these deficiencies is made up by Rick or Haartsen which provide no teaching of filtration systems.

Wachter and Grandjean also give no indication of replacing any of their filters with an NBC filter. Wachter does not include an NBC filter, but a coarse dust filter and a suspended matter filter or gas filter. Grandjean also does not discuss an NBC filter, but an electrostatic filter and a high efficiency filter. These are very different types of filters used for different activities and there is no indication that any of the filters in Wachter or Grandjean are designed to filter Nuclear, Biological, and Chemical agents or to be replaced by a filter that does.

In light of the above remarks, Applicants respectfully request that the Examiner withdraw his rejection of the claims.

Conclusion

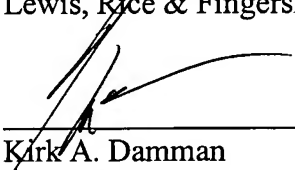
In light of the above remarks, Applicants believe there are no further issues regarding the patentability of the pending claims and respectfully request the Examiner withdraw the rejections and allow all pending claims so that this case can pass on to issue.

Applicants believe no additional fees are due in conjunction with this filing, however, the Commissioner is authorized to credit any overpayment or charge any deficiencies necessary for entering this amendment, including any claims fees and/or extension fees to/from our **Deposit Account No. 50-0975**.

If any questions remain, Applicants respectfully request a telephone call to the below-signed attorney at (314) 444-7783.

Respectfully submitted,
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